

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11784 of 1997

Dated:29.3.2007

Between

Deputy Executive Engineer,
Gotta Barrage Sub Division,Vamsadhara
Project, Srikakulam.

.....Petitioner

and

1.Sri Gorela Chinnappayya
and another.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11784 of 1997

ORDER:

This writ petition is filed challenging the Award made in I.D.No.58 of 1991 dated 25.9.1997 on the file of the Industrial Tribunal cum Labour Court, Hyderabad, whereunder the petitioner-management was directed to reinstate the 1st respondent-workman into service with continuity of service but without back wages.

The petitioner is the Management. 1st respondent is the workman. It appears that when the service of the 1st respondent was terminated, he raised a dispute. Ultimately the matter was referred to the Industrial Tribunal under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short 'the Act') for

adjudication of the following issue:

“Whether the Deputy Executive Engineer, Gotta Barrage sub division, Vamsadhara Project, Hiramandalam is justified in terminating the services of Sri G.Chinnappayya? If so, to what relief the said workman is entitled?”.

It was the case of the 1st respondent-workman that he worked as Man Mazdur under the respondent for the period from 1973 to September, 1977 continuously and he was retrenched from service with effect from September, 1977 without notice and compensation. He was paid Rs.240/- at the time of retrenchment. He was retrenched while retaining his juniors and fresh workmen were appointed without giving him an opportunity for re-employment and thus, his removal from service is contrary to Sections 25-F, G and H of the Act. The petitioner-Management failed to reinstate him in spite of his repeated requests. He remained unemployed since removal and could not secure employment elsewhere in spite of his best efforts. Thus, prayed for reinstatement with backwages and continuity of service.

The petitioner-Management filed counter denying the allegations. It is asserted that the 1st respondent-workman never worked with the Management at any time and the question of removing him from service does not arise and there is no privity of contract between the parties.

In support of his case, the 1st respondent-workman himself examined as WW1 and marked Ex.W1. On behalf of the Management, MW1 was examined, but no documents were marked.

After a detailed consideration of both oral and documentary evidence on record, the Tribunal came to a conclusion that the retrenchment of the workman is in contravention of Section 25-F, G and H of the Act and further directed reinstatement of the workman without backwages and without continuity of service. Aggrieved by the same, the present writ petition is filed by the Management.

Learned counsel for the petitioner-Management strenuously contended that the 1st respondent-Workman was never appointed by the

petitioner, therefore, the claim of the 1st respondent was false and this aspect was not properly considered by the Tribunal. Even otherwise, the case of the management is that the workmen have been engaged in the works relating to Gotta Barrage works. As soon as the works are completed or the project work is completed, all the workmen are liable to be dispensed with. More over, the 1st respondent contended that he was paid a sum of Rs.240/- per month at the time of retrenchment i.e., September, 1977. So, if the case of the 1st respondent is accepted (without admitting the facts of the working) his wage would have been a sum of Rs.8/- per day. This is utterly false in view of the fact that the daily wages were fixed by the Collector @ Rs.2.50 to 3.50 per day during the period from 1973 to September, 1977. Therefore, the statement made by the respondent-workman is false and the Tribunal was carried away by the false claim made by the respondent-workman and as such, the award is liable to be set aside.

Learned counsel for the 1st respondent-

workman supported the award made by the Tribunal and submitted that absolutely no ground is made out calling for interference of this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

In this regard, it may be necessary to notice the findings recorded by the Tribunal. It is in the evidence of MW1 that on verification of the records from 1973 to 1977 maintained in the office of Pay and Accounts Office, Vamsadhara Project, Srikakulam, it is found that the workman never worked in their division. But he admitted in his cross examination that counter was filed as per the report received from the Sub Division Office. The petitioner-Management failed to produce the report in the Court. Thus, the Management has suppressed the relevant records for the period concerned though it is available and

therefore adverse inference is raised against the Management and in favour of the workman that the 1st respondent-workman worked with the Management from 1973 to 1977 continuously and therefore, the petitioner contravened the provisions of Section 25-F, G and H of the Act. The findings recorded by the Tribunal are cogent, convincing and in the circumstances, no interference can be made by this Court under Article 226 of the Constitution of India. Writ petition is devoid of merits and is liable to be dismissed.

Writ petition is accordingly dismissed. No costs.

29-03-2007

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